Supreme Court, U.S.
FILED

97 1854 MAY 18 1998

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No. _____

In The
SUPREME COURT OF THE UNITED STATES

October Term 1998

Joan Godwin PIERSON, Et.Al.,
Petitioner Pro Se

v.

Wilshire Terrace Corporation, Et.Al
Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Ninth Circuit

# PETITION FOR WRIT OF CERTIORARI

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Petitioner Pro Se

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Petitioner Pro Se Joan Godwin Pierson submits this Petition for a Writ of Certiorari in this case against Respondent Wilshire Terrace Corporation whose counsel is Mitchell, Silberberg & Knupp, 11377 West Olympic Blvd. Los Angeles, California 90064, attorneys John Kuechle, Jean Nogues, Yakub Hazzard.

## QUESTIONS

Whether individuals' right to free speech as right to be heard within a court of law is as fundamental as is the right of press, and low-value speech rights such as commerce, etc to be heard in public forum, under the United States Constitution's First Amendment guarantee of freedom of speech.

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Whether there is a case or controversy, Where respondent accepts satisfaction, voluntarily dismisses action and files a second on the same matter in violation of policy against multiplicity of litigation/double jeopardy; Where all courts ignore, omit or moot threshhold question of jurisdiction, dispositive evidence and facts, and controlling laws, then order prevailing-party-petitioner to pay respondent's attorneys' fees and costs on grounds in both cases of same unsigned contract; under United States Constitution Art. I, Sec. 10, Art. III, and Amendments I, V, VIII, and XIV.

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Whether costs and attorney fees awarded to respondent in void-postjudgment advisory opinion under 28 U.S.C. 1447(c) on ground of unsigned contract, after second action on same matter by respondent who voluntarily dismissal first where petitioner had been declared prevailing party over four years previous, violates 28 U.S.C. ##1331, 1441(a),(b)(c)+(e), 1443(1)&(2), 1446(b), and 1447(d); and civil rights under 28 U.S.C. 1443; 42 U.S.C. ##1981,1982,1983,1985,1986,1988; and U.S. Constitution Amend.I, V, VIII and XIV.

## LIST OF PARTIES

Plaintiff/appellee Wilshire Terrace Corporation is a nonprofit cooperative housing association which Petitioner believes has no subsidiaries. Attorney for said Corporation, Mitchell, Silberberg & Knupp, also represents said Co-op Directors against defendant\appellant\petitioner Co-op equity owner Joan Godwin Pierson.

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## OPINIONS BELOW

The Opinion of Federal District Court's Order, written by respondent's attorney on May 05, 1997, signed by an unknown judge [signature undecipherable], not by Judge presiding over hearing, ordered remand to State court, and awarded costs and fees to respondent, omitting question of whether there is a case or controversy or deciding request for stay/injunctive relief until justiciability could be determined, and on false ground of "untimely" removal where it Was timely [fn.1]. It appears at Appendix ("Pet.App.") A to the petition.

The Opinion of U.S. 9th Circuit Court of Appeal on February 23, 1998, unsigned and unpublished [see "Memorandum*" ERRORS, Pet.App.B&C pp.23-26], was to affirm the district court's remand to State court and award of costs and fees without comment on dispositive evidence, facts, petitioner's claims, supporting laws or question of whether there is no case or controversy, in an advisory opinion omitting the threshold issue of jurisdiction and violating said Court's own 1996 precedent [fn.2], It appears at Pet.App.B and C to the petition.

The Opinion of California Court of Appeals on November 11, 1996 mooting all evidence, facts, and petitioner's claims and authorities appears at Pet.App.D to the petition.

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fn.1. Petitioner had timely filed [four times - 02/16+17+20 and 03/08] notices of removal from State to Federal court under 28 U.S.C.#1443 after highest State court denied review on January 22, 1997 when case was first ascertained removable under 28 U.S.C. #1446(b).

fn.2. in Rennick v. O.P.T.I.O.N. Care, 77 F.3d 309 (9th Cir.1996) [".. the rights of private parties to enter into contracts also embraces their rights not to" [at 316].

## JURISDICTON

The Date of entry of Central California Federal District Court's Order remanding to State court and awarding costs and fees to respondent, is May 05, 1997.

The Date of entry of U.S. 9th Circuit Court of Appeal's unsigned, unpublished "MEMORANDUM*," affirming District Court, is February 23, 1997.

The Date of State of California Supreme Court denial of review of State Court of Appeals' twice awarding respondent costs and attorneys' fees is January 22, 1997.

The jurisdiction of this Court is invoked under 28 U.S.C. 1651(a); and #1254(1) and 2101(c)&(e), under which any party may petition this Court "at any time" before Circuit Court decision [or within 90 days advisory opinion]; and FRCP Rule 12(h)(3) which states that jurisdiction may be questioned "at any time."

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The primary constitutional provisions for protection against a Federal court of appeals' refusing to decide whether there is a case or controversy yet affirming in advisory opinion award of costs and attorneys' fees and allowing District Court to remand to State court are the United States Constitution Art.I #10, Art.III, and Amend.I, V, VIII, and XIV.

Federal statutes involve federal civil rights and jurisdictional questions under Federal statutes 28 U.S.C. ##1254(1), 1331, 1441(b), 1443(1)&(2), 1446(b)-[paragraph 2], 1447(c), 1447(d), 1651(a), 2101(c)&(e); 42 U.S.C. 1981, 1982, 1983, 1985, 1986, 1988; and FRCP #12(h)(3).

State statutes involve right to protection against multiplicity of litigation under California Code of Civil Procedure ("CCP") #426.10, #426.30, and constitutionality of ambiguous CCP 581(i), which allows dismissal without hearing the opposing party, and insufficient California Government Code #6201 which promotes mutilation of files by ineffectual $1000 penalty; and awards to prevailing party petitioner under CCP #1032.

## STATEMENT OF THE CASE

This case involves nonprofit cooperative housing association Wilshire Terrace Corp. ["WTC Co-op"] Directors' unsigned, unilateral, protested lease as ground for frivolous actions (Pierson withheld "rent" when Directors refused to replace petitioner's certificate of title after arson condemned the building); ignoring the strict policy against multiplicity of litigation by filing against owner/shareholder Pierson a second action for the same attorney fees after accepting satisfaction and voluntarily dismissing the entire first case; and five years of five courts' ignoring all uncontested evidence and facts, and controlling laws, refusing to address threshhold issue of justiciability, and yet granting costs and fees to WTC Co-op where Pierson is prevailing party.

Action #2 has been void from the beginning. Respondent WTC Co-op's prayers in both complaints request the same attorneys' fees.
**Action #1:** Unlawful Detainer [04/05/93 #SC023196] [Clerk's Transcript ("C.T") I,vol.1 at 5]:

"6. For reasonable attorneys' fees;
7. For costs of suit incurred herein;"

**Action #2:** Breach of Lease [11/18/93 #SC027184, [C.T. II,vol.1 at 8]

"3. For reasonable attorneys' fees;
4. For costs of suit incurred herein;"

Petitioner has appealed four times [for appeal #4 to Federal Court of Appeals see Pet.App.F]. to stop litigation, yet all courts ignored petitioner's appeals on insufficient contract, payment in full, two actions on the same attorney fees.

On January 22, 1997 State Supreme Court denied review of State Court of Appeals' advisory opinion [at 12 Pet.App.C] awarding costs and fees to WTC Co-op without considering whether there is a case or controversy. Within 25 days Pierson removed to Federal District Court for Central California under 28 U.S.C. ##1443 and 1446(b) [see supra page 1,fn.1].

Federal District Court repeated State courts' pattern of issuing advisory opinions [this time the order was written by WTC Co-op attorney] without considering justiciability, standing or any of the threshold issues, any of which would end this entire litigation; and ignoring Pierson's three requests for stay/ preliminary injunction.

Jurisdiction is now in Federal 9th Circuit Court of Appeals, justiciability never [see "Memorandum*" ERRORS, Pet.App.B&C pp.23-26] in five years having been determined, yet prevailing party Pierson has been ordered three times to pay to WTC Co-op costs and attorneys' fees, without any court having addressed the issue. The 9th Circuit Court has violated two of its own precedents and its own policy conflicts with the "Memorandum*" ruling [see Rennick, Smitt, and Latex cases 9th Circuit cases pp.1,11,12,14,16,24,25,26.

Pierson, having exhausted all State and Federal remedies for this litigation, herein petitions this Court to qualify and define the right to be heard in courts under free speech

rights, decide whether there is a case or controversy, and strictly scrutinize cost and attorney fee awards to the wrong party, and order monetary awards to petitioner.

Pierson claims U.S. constitutional violations of Amendments I, V, VIII, AND XIV; and of Article 1, Sec.10, and III, Sec.2.

## REASONS FOR GRANTING WRIT

This petition questions the most fundamental liberty, the greatest public interest in law of Americam people: right for a defendant to speak.

ALL FACTS AND EVIDENCE ARE UNCONTESTED

Plaintiff/respondent Co-op Directors filed suit for rent, damages, costs, and attorney fees on ground of unilateral, protested, unsigned lease.

Defendant/petitioner Pierson paid.

Co-op Directors took Pierson's money without releasing petitioner's certificate of title.

Co-op Directors voluntarily dismissed the entire action.

State trial court said defendant/petitioner Pierson is prevailing party.

Co-op Directors then filed a second lawsuit on same attorney fees demanded in the first action, and frivolously delayed for over five years *

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* The following abused laws are listed in the same chronological order as above listed facts and evidence, then analysed according to right to be heard, justiciability [case or, controversy], legality of awarding costs and fees to the wrong party, and motivation.

## THE LAWS ARE WELL SETTLED

1. Payment, Acceptance, and Voluntary Dismissal constitute forfeiture of any further litigation on the same or related matters under Amendment V [see "Civil Double Jeopardy" infra pp.13-14.]

2. The Second of Two Lawsuits on the same matter violates the policy against multiplicity of litigation/prohibition of civil double jeopardy under Amendment V [Ibid.]

3. Unsigned Lease as ground for specific demand, such as attorney fees, in lease's nonbinding terms violates U.S. Const. Art.1, sec 10. [see Right Not To Contract infra pp.14-15]

4. Advisory Opinions as final decree on costs and attorney fees ignoring threshold issue of whether there is a case or controversy violate U.S. Const Art. 3 & 2, cl.1; civil rights; FRCP 12(h)(3); and precedent. [see No Case Or Controversy infra pp.12-18]

5. Prevailing Party receives damages, costs and fees etc where there is no express contract [see Costs And Fees infra p.17]

6. Jurisdiction must be determined before any other issue, even if no party raises the question. [see No Case Or Controversy infra pp.12-18]

## A. RIGHT TO BE HEARD AS FREE SPEECH

The fundamental right to be heard is guaranteed only by Amendment XIV of the U. S. Constitution and only through case law. More than a century ago, Baldwin v. Hale (1863), 68 U.S. 223, 1 Wall. 223, 17 L.Ed.531, stated:

> "Parties whose rights are to be affected are entitled to be heard." [68 U.S. at 235]

The Baldwin Court used the verb 'heard,' not the procedural noun 'hearing.' A hearing is a proceeding (fn.3) To hear is to judicially consider (fn.4). The religious iteration, "the Lord has heard my supplications" (psalms 116.1) commonly means the Lord has given relief to the supplicant. The courts, as earthly providers of righteousness, can grant proper relief only by hearing both parties in a case. i.e. considering judicially, the needs claimed. Due process and equal protection require that both parties be heard. Petitioner believes that freedom of speech within the courts has never been considered. Yet Speech before deaf ears is not heard, somewhat analogous to newspapers being allowed to print, but not being allowed distribution.

"(I)f any opinion is compelled to silence, that opinion for aught we can certainly know, be true" (fn.5).

In the instant cases, manipulated procedure and error ridden prejudicial advisory opinions have suppressed truth and silenced petitioner's opinions and claims by omitting dispositive evidence and facts; laws; and threshold issues. and is abuse of discretion.

Both State and Federal courts have denied petitioner the right to be heard. The United States Supreme Court has held in many cases that freedom of speech under the First Amendment applies to the States under the Due Process Clause of the Fourteenth Amendment. 44 Liquormart v. State of Rhode Island (1996), 116 S.Ct. 1495 at 1496, 1498, 1500, 1501n1, 1523 [517 U.S. ___].

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fn.3. Black's Law Dictionary at 721, West Pub. 1996, (the word 'hear' is not entered).

fn.4. New Shorter Oxford English Dictionary, vol I, at 1204, Clarendon Press, 1993).

fn.5. Rotunda & Nowak Treatise on Constitutional Law" #20.6 at 15 (West Pub. 1992) quoting John Stuart Mill's "On Liberty."

Neither State nor Federal government can place bans without compelling need to do so on political, commercial and telecommunications rights where "regulations .. entirely suppress commercial speech in order to pursue a policy not related to consumer protection," [Id. at 1506 quoting Central Hudson Gas & Elec. v. Public Serv. Comm'n of N.Y. [(1980), 447 U.S. 557, 100 S.Ct.2343, 65 L.Ed.2d 341 at 566].

Free speech and the public's right to information must be weighed against the State's interests in denying them. 44 Liquormart uses the Central Hudson test (at 566) of a four part analysis to determine First Amend. protection:

> ".. it at least must concern lawful activity and not be misleading. Next we must ask whether the asserted government interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest."

The four pronged test of whether freedom of speech is allowed requires lawful activity. A party to an action cannot file an unlawful claim in Court as it is the Court which must determine whether the claim is lawful.

However, the right of all individuals to freedom of speech guaranteed by the First Amendment must be balanced and weighed against whether government interests in suppressing free speech are substantial. The courts' interest in not hearing one party's claims appears to be concern for prolonged costly litigation and workload reduction, but this must be weighed against inevitable prolonging litigation and far more substantial costs where the court hears only one party's abuses of

process to delay a six month resolved controversy into over five years as well as prejudice against petitioners rights.

Suppression by mooting valid claims, advisory opinions based on faulty assumptions, docketing timely papers as "untimely," etc. creates de facto denial of free speech, equal protection, and due process, all essential elements of a democratic society [see 44 Liquormart at 1512).

The Court's regulation does not directly advance a governmental interest. Discretionary complete ban on petitioner's speech does not advance State judicial system interests. The court's having dismissed the entire litigation over four years and seven months ago upon plaintiff's acceptance of payment [09/30/93] and voluntary dismissal [11/04/93] would have saved nearly five years of courts' workload reduction and taxpayers' costs, on frivolous, vexatious, nonjusticiable, litigation.

Much waste could have been avoided if petitioner had been heard in 1993, or 1994, or 1995, or 1996, or 1997, or by Federal 9th Circuit Court of Appeals in 1998. Respondent's second action is not only unlawful, but is detrimental to government interests. Attorney fees mount where none are owed. If this delay is incentive to continue a dead case, WTC Co-op should be heavily sanctioned.

The final prong is whether the asserted government interest is not more extensive than is necessary to serve that interest. In the instant case, judicial interest in economy in avoiding delay and wasteful costs is more extensive than necessary where it countenances such waste by ignoring whether there was a case or controversy, hearing only one party, whom petitioner claims lacks standing.

Brookhauser v. State (1992), 10 Cal.App.4th 1665, 1678, 13 Cal.Rptr.2d 658 states:

"the law requires appellate courts to search the ENTIRE (court emphasis) record, and to make their determination of sufficiency in light of ALL (court emphasis) the evidence in the case. This approach qualifies the "in the light of most favorable" rule.'

Central Hudson [citing Ohralik v. Ohio State Bar Assn. (1979), 436 U.S. 447 at 456, 457, 98 S.Ct.1912, 56 L.Ed. 444] states:

"The Constitution .. accords a lesser protection to commercial speech than to other constitutionally guaranteed expression" (Central Hudson at 563).

Such discretionary decrees do not directly advance governmental interest, they retard and obstruct governmental interests. Ignoring evidence, threshold issues, and dispository facts is abuse of discretion which never serves government interest, it subverts it. The judicial system is a division of government best served only by hearing both parties in a suit, and determining as early as is possible whether there is a case or controversy.

Where only one party is heard, reduced efficiency and prolonged nonjusticiable litigation defeat the courts as well as the taxpayers and the aggrieved petitioner. The Government interest is not only not served, but the government acts in a manner contrary to its best interests when it prolongs frivolous cases.

State court dismissed all of petitioners appeals without petitioner's ever being heard. Corrigan v. Superior Court (1925), 72 Cal.App. 383 holds an order dismissing an appeal duly perfected is annulled because it

"is .. an attempted abdication of a jurisdiction which the court is bound in

every proper case to exercise. It is .. a refusal to decide a cause which it is the plain statutory duty of the court to decide." 9th Circuit affirmed remand and awards to respondent without petitioner's ever having been heard. Petitioner claims this too an "annulled," advisory opinion.

Goldberg v. Kelly [1970] 397 U.S. 254, 90 S.Ct. 1011, 25 L/Ed. 287 defined a six prong test of parties' rights in court to: 1. timely notice detailing reasons for proposed [demands], 2. confront adverse witneses and present evidence and arguments, 3. representation by attorney, 4. court's stating reasons for ruling, 5. court's indicating evidence decision relied on, and 6. court's impartiality. [397 U.S. 254 at 254, 255].

In the instant cases, all courts have denied petitioner the six Goldberg tests. Again the 9th Circuit Appeals Court violated its own policy in ruling that the same district court judge abused his discretion in remanding, "without providing any supporting reasoning or making any factual findings" [United National Insurance Co. v. Latex Co. Docket #97-55123, L.A. Daily Journal 04/07/98 DAR at 3457].

However, the Goldberg decision was narrowly defined, and does not protect the majority of cases, including the instant cases, in which abuses of these rights occur. Petitioner Pierson asks this Court to correct this injustice by declaring and defining a right to be heard in court as a free speech right. Putting concise meaning of communications in court into such vague constitutional language as "due process" and "equal protection" is not enough.

This Court held unanimously in N.Y. Times v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 686, 84 S.Ct. 710 [at 254, 272] that the Constitution envisages

First Amendment "breathing space" for "uninhibited debate." Petitioner contends that this must apply to courts as well.

Restricting the right to be heard in court to Amend. XIV, indispensable liberty interests of speech, press, and association are lost. Rights in court must not be fewer than low-speech value commercial rights [fn.6] in the public forum.

In conflict with this fundamental policy and in violation of its own precedent [see supra fn.2, p.1; infra p.14] U.S. 9th Circuit Court of Appeals and District Court disregarded the interests of California and of petitioner, delayed closure of void litigation, ignored facts, etc., and, lacking jurisdiction, restricted advisory opinions to monetary awards to respondent despite firmly established 1993 State trial court judge's statement that petitioner is prevailing party. [fn.7]

Fundamental freedom of speech, right to redress grievances and liberty interest are as great concerns to the public interest as are commercial rights. The Goldberg and Central Hudson tests should apply to all parties.

## B. THERE IS NO CASE OR CONTROVERSY

There is No Case Or Controversy where all courts, by errors, abuse of discretion, and denial of right to be heard, omitted or mooted evidence; facts of payment in full, insufficient contract, voluntary dismissal, and second case on the same attorney fees; and controlling laws.

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fn.6 see supra p.10 Central Hudson at 563.
fn.7. On December 15, 1993 the court told petitioner Pierson: "you've won" (Reporter's Transcript at 2, l. 23). [see infra p.18].

State v. Earnest, 3 Cir., 673 So.2d 1341, 1343, 95-1689 (La.App. 3 Cir. 1996, holds that double jeopardy is a jurisdictional defect).

Civil Double Jeopardy aggrieved prevailing party petitioner where, despite petitioner's having been determined prevailing party, three times monetary awards were given to respondent.

Fifth Amendment Double Jeopardy rights are protected in civil multiple litigation. United States v. Halper (1989), 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed. 2d 487 holds that the same monetary penalties imposed twice are punishment which violates the Amend. V double jeopardy clause (at 439,443,448,449); that a penalty in a civil proceeding may give rise to double jeopardy; and that the labels affixed either to the proceeding or to the relief imposed.. are not controlling and will not be allowed to defeat the applicable protections of federal constitutional law. [at 435, 448].

The strict policy against multiplicity of litigation [Carroll v. Import Motors Inc. [fn.8] petitioner Pierson contends is civil double jeopardy. This Court held in Benton v. Maryland (1969), 395 U.S. 784, 89 S.Ct. 2056,23 L.Ed.2D 707 that this Fifth Amendment guarantee,

> "represents a fundamental ideal in our constitutional heritage, and that it should apply to the States through the Fourteenth Amendment (at 784, 789)."

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fn.8. 33 Cal.App. 4th 1429, 39 Cal.Rptr. 2d 791 (1995) supported by California Code of Civil Procedure #426.10 & #426.30. Federal Rules of Civil Procedure #13 (a) also require that all related matters be adjudicated in a single action, a fundamental principle of law since before the Christian era.

Balancing a party's double jeopardy rights as in free speech rights, against government needs, produces no evidence that government had any needs contrary to petitioner's needs. It is well documented that judicial needs are better satisfied in a single action than in a multiplicity of actions on the same matter.

Double jeopardy, whether punishment, penalty, or risk, should not be supported by courts which are bound by law to protect law-abiding citizens. Petitioner contends that a criminal in jail is no less safe than an elderly woman forced penniless onto the streets by unjust and prejudicial judicial discretion to not listen.

Repeated Awards of Costs and Fees based on errors and omissions is punishment, Pierson claims, and thus double jeopardy.

Ignoring Petitioner's Right Not To Contract the United States 9th Circuit Court of Appeals violated its own precedent: Rennick v. O.P.T.I. O.N. Care, 77 F.3d 309 (9th Cir. 1996) where said Court held that a valid contract requires mutual assent and that,

> ".. the rights of private parties to enter into contracts also embraces their rights not to" [at 316]

Pierson did not sign the Co-op lease. Said unsigned, protested, lease clause as ground for attorney fees, violates U.S. Const. Art.1, sec 10 as well as 9th Circuit's own precedent.

These well settled concepts go back centuries. In 1821 Wood v. Edwards 19 Johns 205 [N.Y.] supported the right to refuse to sign an altered contract, stating that the second, altered cntract "was entirely inopertive." [at 213].

Santandrea v. Siltec Corp., (1976) 56 Cal. App3d 525, 128 Cal.Rptr 629 first cited by

petitioner Pierson in 1993 [Answer] holds that there is no triable issue of material fact in an unsigned lease:

> ".. no contract existed (because) "usage can be invoked only to interpret, not to create contractual terms. This cause of action .. is wholly without merit."

Petitioner signed none of the many altered contracts, and doesn't even use said property, having been forced out by arson in 1989, and having paid nearly $70,000 because WTC Co-op Directors obstructed her sale by refusing to give Pierson her replacement title, causing needless, damaging and useless payments [equity owners are not allowed to sub-lease] for well over eight years. [fn.9]

Where the courts ignore the laws repeatedly, and violate their own precedent, they violate defendant's rights. Step-Saver Data Systems, Inc. v. Wyse Technology, 912 F.2d 643 holds that the courts cannot make law without reviewing an unsigned lease:

> "construing a contract and making law without finding the necessary facts constitutes an advisory opinion and is constitutionally forbidden."].

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fn.9. This Cout's most recent co-op case, United Housing v. Forman (1975) 421 US 837, 44 L Ed 2d 621, 95 S.Ct 2051, held only that co-op ownership is non-negotiable securities. Securites laws do not apply. Most applicable punitive damages awards for egregious defamation of title were affirmd by this Court in TXO v. Alliance (1993) 509 U.S. __, 125 L.Ed. 2d 366, 113 S Ct __, In the instant case WTC Co-op Directors for nine years have prevented petitioner from selling her interest in WTC Co-op by refusing to give Pierson her title.

Advisory Opinions have been barred by Article III of the constitution since 1793. [fn.10] Madison v. Ludwig, C.A. 1996, 82 F.3d 1085, 317 U.S.App.D.C.281 holds:

"A federal court cannot decide the merits of an action until it has satisfied itself that the proper constitutional and statutory authorities exist for the court to assert jurisdiction. Otherwise, any decision would be an advisory opinion, barred by Article III of the Constitution."

Almost every form of speech has been protected except that in the courtroom. This legal lacuna allowed the Ninth Crcuit Court of Appeals to issue an advisory "Memorandum*," affirm costs and fees ignoring evidence, facts, and well settled laws, cite inapplicable cases and Federal codes, all on ground of respondent's false claims [fn.11.see also Pet.App.B&C pp.23-26 "ERRORS"]. Courts' decisions disregard State, party's, and public interests.

Putting law-abiding, innocent, formerly financially sound elderly women on the streets by endless protraction of void frivolous suits, hearing only powerful adversary, and giving him monetary awards is unjust. Five years' litigation in which there is no case or controversy is a miscarriage of justice. Relentless harassment by both respondent and courts requires finality.

If negligence of three judges in expressing their views as sufficient grounds to frustrate the interests of a state of some tens of millions

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fn.10. The Correspondence and Public Papers of John Jay vol.III 486-489, H. Johnston, ed (New York: G.P. Putnam's Sons, 1891).

fn.11. citing its own inapplicable "Moore" case and Title 28 #1447(c), misapplying its own "Schmitt" case, and ignoring its own controlling "Rennick" case [see App.B&C,pp.23-26]

of people in making a final judgment in its favor is the rarest of cases, rarity does not make free free speech rights in court less fundamental. Prejudicial omission of all facts and defenses exposes government and public interests to future abuses, such as hearing only one of two parties while the other party is neither heard, read, weighed, addressed nor even acknowledged.

Korakas v. U.S., D.C.N.H. (1992), 791 F.Supp. 35; C.A.1st 1992, 980 F.2d 20; cert denied 114 S.Ct. 74, __ U.S. __, 126 L.Ed.2d 43, holds that courts are obligated to raise the issue of jurisdiction sua sponte. Where there is none, courts must dismiss, not remand [Moravian v. Rawlins [1995] 70 F.3d 270, 3e cir.

C. COSTS AND ATTORNEY FEES GO TO PREVAILING PARTY.

Costs and Fees Should Be Awarded to "Prevailing Party" Petitioner [see fn.7 p.12], yet advisory opinions suppress evidence, facts, and well settled laws, ignore threshhold issues of civil rights, and jurisdiction and erroneously grant awards to respondent.

Under CCP #1032, a "prevailing party" is ordinarily entitled "as a matter of right" to recover costs in any action [CCP 1032(b)]. This includes "a defendant in whose favor a dismissal is entered" [CCP 1032(a)(4)], See also FRCP R.54, 28 U.S.C. 2412, 42 U.S.C.1988(b). The unsigned WTC Co-op lease was never noticed by any court, yet State trial court said to petitioner in 1993: "You've won" [see supra, fn.7 p.12].

Action #2 is labeled "Breach of Lease." An unsigned unilateral contract is void and cannot be breached, [see Edwards supra at 14]. Thus, all statutes on ground of valid contract are inapplicable here.

Civil Rights and Procedural Abuses abound in The U.S. 9th Circuit Court of Appeals void post-judgment "Memorandum*," which falsely states that petitioner appeals "award of $880 in attorneys fees in favor of Wilshire Terrace under 28 U.S.C. #1447(c)" [see Pet.App.B opening line], ignoring and contradicting the entire notice appealing "District Court's refusal to rule on constitutional questions and defendant's request for injunction, and refusal to recognize defendant's 28 U.S.C. #1443 civil rights, and other refusals to exercise jurisdiction and abuses of discretion and from the void postjudgment order .." [see Pet.App.F, p.28]

Said "Memorandum*" and the District Court Order [Pet.App.A, p.22] violate petitioner's rights under 28 U.S.C. ##1331, 1441(a),(b)(c)+(e), 1443(1)&(2) [removable where State courts won't rule], 1446(b) [when removal is first ascertained], and 1447(d) [remand is appealable] and Title 42 civil rights ##1981, 1982, 1983, 1985, 1986, and 1988, all of which taken together supersede 28 U.S.C. 1447(c).

These codes cover every aspect of removal, remand, and costs and fees which apply to petitioner's right to end this void five year litigation and receive monetary awards, including punitive awards, to prevailing party Pierson.

This violation of so many Federal statutes shall be explained in detail in petitioner's brief if this Court will allow Certiorari. Or, if this Court prefers, peitioner's reply brief and request for rehearing, both analysing in great detail [fn.12] the procedural abuses, can be added to this petition.

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fn.12. As Title 42 civil rights are all covered by 28 U.S.C. #1443, petitioner Pierson has cited them in lower courts without discussion.

D. MOTIVE IS ESSENTIAL TO UNDERSTANDING

Manipulation of the system is ubiquitous: harassment, alteration of files, uncorrected docket sheet errors, refusal to send conformed copies or docket sheets, payment checks returned, ignored, or delayed, theft of petitioner's papers, etc. The 9th Circuit gives only ambiguous answers such as "the case is closed," and "it's been taken care of," with no explanation.

Motive for egregious flouting of the law is germaine. Meg Greenfield [Washington Post 04/27/98 A17] discussed common methods to prevent issues from being judged:

> "lawyers .. disappearing into the legal fine points can embroil the issue in so much complication and self-willed delay and perplexity that it is no longer even susceptible to reasoned resolution by a court.."

Petitioner has probable reason to believe a primary motive for harassment, slander and delay is that persons or entities want to keep her novel, about millions of dollars and a secretive govenment agency, from being published. This Court's knowledge of such possibility and five courts'refusing to allow defendants to be heard are esential for understanding of this petition. Pet.App.G is a summary of said novel.
G page 30

Novels are fiction, but life's experiences influence. Examples: Petitioner's deceased Mother married at 85 a man who claims to be a former CIA agent; Strict scrutiny might reveal evidence of manipulation of petitioner's substantial inheritance [approximate potential value of about $20,000,000] never received.

Legal action for fabricated claims can cover and divert from illegal activities. Suppressing right to be heard in court can obstruct exposure of illicit scams.

Petitioner is entitled to invoke U.S. Supreme Court judgment where civil rights and rights under Federal Constitution were denied in State court [28 U.S.C.##1257(a) and 1443], and in federal courts [28 U.S.C. ##1254(1), 1443, 1446(b) paragraph two], and 1447(d).

Accordingly, petitioner Pierson prays that this Court (1) qualify and define the meaning of Amendment I free speech and liberty rights as applied in the courts and all deliberating judicial bodies; (2) decide whether there is a case or controversy, (3) decide whether costs and fees go to prevailing party and (4) dismiss immediately the entire litigation, consisting in:
US Court of Appeals, 9th Circuit Civ. #97-55645
US District Court, Ninth District Civ. #97-1576
CAL. Supreme Court Civ. ##s SO54298/SO57961
CAL. Appeals Civ. ##s BO81436/BO82466/BO86583
Los Angeles Superior Court ##s SC023196/SC027184

No legal right to free speech in court exists without a well defined right to be heard as a free speech right under Amend.I. The very essence of civil liberty consists in the right of every individual to claim the protection of the laws whenever he receives an injury.

## CONCLUSION

For all of these reasons stated herein, the Petition for Writ of Certiorari to U.S. Ninth Circuit Court of Appeal to hear petitioner's grievances, to state reasons for its ruling, and to determine that there is no case or controversy should be granted and all action below be stayed until said issues be determined.

Dated:
May 18, 1998

Respectfully submitted,

Joan Godwin Pierson
Petitioner Pro Se

PETITION FOR WRIT OF CERTIORARI

## APPENDICES


THIRD GRIEVANCE

A. U.S. District Court for Central California May 05, 1997 Order -------- 22

B. U.S. 9th Circuit Court of Appeals February 23, 1998 "Memorandum" ------- 23

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E. California Court of Appeals, Second District's first award [erased from Order, but reprinted on Remittitur] ---- 28

F. Petitioner Pierson's Fourth Appeal on 28 U.S.C. #1443 AND #1446(b), second paragraph ---------- 29

G. Petitioner Pierson's Novel as motivation for suppression of speech --- 30

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILSHIRE TERRACE CORPORATION) CASE NO.CV 97-1567 R
Plaintiff, )
) [PROPOSED] ORDER
v. )
)
JOAN GODWIN PIERSON ET AL., )
Defendants.)
)

ENTERED CLERK,
U.S.DISTRICT COURT
MAY 12 1997
CENTRAL DISTRICT
OF CALIFORNIA
BY <initialed>

The hearing on Plaintiff Wilshire Terrace Corporation's Motion to Remand Action to State Court and Request for $880 in Costs and Attorneys' Fees ("Motion") came on regularly for hearing at 10:00 a.m. on May 5, 1997 before the Homrable Manuel L. Real. Yakub Hazzard of Mitchell, Silberberg & Knupp LLP appeared on behalf of plaintiff. Joan Godwin Pierson appeared pro se. After considering the papers submitted, and hearing the arguments presented, the Court hereby grants the Motion in its entirety. The matter is hereby remanded back to State Court. In addition, Joan Godwin Pierson is hereby ordered to pay $880 in costs and attorneys' fees to Wilshire Terrace Corporation forthwith.

Dated: May 5, 1997 <illegible signature of substitute judge

The Homorable Manuel L. Real
United States District Court Judge

Submitted by:
JEAN PIERRS NOGUES
YAKUB HAZZARD
MITCHELL, SILBERBERG & KNUPP LLP
By:<signature of Yakub Hazzard>
Attorneys for Plaintiff Wilshire Terrace Corporation

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

FILED
FEB 23 1998
CATHY A. CATTERSON, CLERK
U.S.COURT OF APPEALS

| | |
|---|---|
| WILSHIRE TERRACE CORPORATION<br>Plaintiff-Appellee,<br><br>v.<br><br>JOAN GODWIN PIERSON,<br>individually and as former<br>Trustee of the Joan Godwin<br>Pierson Living Trust,<br>Defendant-Appellant. | No.97-55645<br><br>D.C. No.CV-97-1576-R<br><br>MEMORANDUM* |

ERROR 1
SEE PP. 25-26 APP.C

Appeal from the United States District Court
Central District of California
Manuel L. Real, Chief Judge Presiding

Submitted February 9, 1998**

Before: PREGERSON, CANBY, and, LEAVY, Circuit Judges

Joan Godwin Pierson appeals pro se from the district court's award of $880 in attorneys fees in favor of Wilshire Terrace under 28 U.S.C. #1447(c). The district court's award of fees followed its remand of Pierson's petition on the basis that her petition for removal was not timely filed and that there was no basis for

ERROR 2
ERROR 3
ERROR 4

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3.

ERROR 5

** The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir. R. 34-4. Accordingly, Pierson's request for oral argument is denied.

ERROR 6

==========

ADVISORY OPINION ON COSTS AND FEES. SEE APP.C for ERRORS

Appendix B [continued next page]

federal subject matter jurisdiction over Wilshire Terrace's action for breach of a residential property lease. |ERROR 7 |ERROR 8

We review the district court's award of attorneys fees and costs under 28 U.S.C. #1447(c) for abuse of discretion. See Moore v. Permanente Med. Group. Inc., 981 F.2d 443, 447 (9th Cir. 1992). "An order remanding the case may require payment of just costs and any actual expenses, including attorneys fees, incurred as a result of the removal." 28 U.S.C. #1447(c). An award of fees is inappropriate where the defendant's attempt to remove the case to federal court was fairly supportable. Schmitt v. Insurance Co., 845 F.2d 1546, 1552 (9th Cir. 1988). |ERROR 9 |ERROR 10 |ERROR 11 |ERROR 12

Pierson brought this removal petition over three years after Wilshire Terrace commenced the lawsuit, and after numerous adverse rulings from the California trial and appellate courts. Because the removal petition was not filed in a timely fashion, see 28 U.S.C. #1446(b), and Pierson failed to offer a legitimate basis for federal subject matter jurisdiction, the district court did not abuse its discretion by awarding fees to Wilshire Terrace when it remanded the action to state court. See Moore, 981 F.2d at 447.1/ |ERROR 13 |ERROR 14 |ERROR 15 |ERROR 16 |ERROR 17 |ERROR 18

AFFIRMED

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1/ Pierson's petition "for writ of constitutionally guaranteed protection of equal rights and due process under the law, her request for judicial notice are denied. |ERROR 19



==========

ADVISORY OPINION ON COSTS AND FEES
[SEE APPENDIX C PP.25-26 FOR OMISSIONS AS WELL AS ERRORS

ERRORS IN THE U.S. 9TH CIRCUIT COURT OF APPEAL'S FEBRUARY 23, 1998 "MEMORANDUM" ["Memo"]

ERROR 1. Trust was revoked before litigation began.

ERROR 2. Petitioner did NOT appeal costs and fees under 28 U.S.C. 1447(c) [See App.F,p.29]. Pierson DID appeal void post-judgment order under 28 U.S.C. ##1331, 1441(a),(b)(c)+ (e), 1443 [removable where State courts won't rule], 1446(b) [when removal is first ascertained], and 1447(d) [remand is appealable] and civil rights 42 U.S.C.##1981, 1982, 1983, 1985, 1986, 1988, all of which supersede 28 U.S.C. 1447(c); and refusal to rule on preliminary injunction.

ERROR 3. Prevailing party petitioner Pierson is entitled to costs and fees under California Code of Civil Procedure ["CCP"] CCP #1032 and federal FRCP R.54 and 28 U.S.C. 2412]. The unsigned lease was ignored by all courts, yet State trial court said to petitioner in 1993: "You've won." [see supra, fn.7 p.12]. Awards should go to Pierson.

ERROR 4. Memo falsely states that District court's remand was "not timely." Removal WAS timely filed within 25 days of State Court final determination under 28 U.S.C. 1446(b) 2nd paragraph. See supra p.1fn.1.

Footnotes to Memo page 1:

ERROR 5. Doctrines not noticed

ERROR 6. Dispositive issues not determined.

[MEMO page 2]

ERROR 7. District court remand and awards were on false grounds and omissions. Refusal to notice federal subject matter jurisdiction, civil rights issues, evidence, facts, and common laws is abuse of discretion. Where State courts refuse to rule, petitioner's right to remove is a civil right under 28 U.S.C. 1443

ERROR 8. The 9th Circuit Memo, denyig federal rights, also violates its own precedent. Rennick v. O.P.T.I.O.N. Care, (9th Cir.1996) [see pp.1,14,16]. holds that private parties have the right **Not** to enter into contracts. Lease is contract, unsigned one cannot "breach" a specific clauses. There was no "breach of residential property lease,"

and rights are forfeited by this second of two actions on the same matter.

ERROR 9. "Memorandum*" repeats its opening sentence error on 28 U.S.C. 1447(c). See ERROR 2.

ERROR 10. In the instant case, removal is proper under eleven codes, Moore rules on breach of a valid contract and improper removal. The Memo evaluated no dispositive fact or controlling law

ERROR 11. 28 U.S.C. 1447(c) is cited for the third time as ground for decision [see ERRORS 2,9].

ERROR12. Again the 9th Circuit Court violates its own precedent. The Schmitt citation acknowledges that award to respondent is inappropriate, but does not review the record in the instant case.

ERROR 13. Second false charge [See ERROR 4] of removal timeliness, again misinterpreting, omitting and violating 28 U.S.C. 1446(b) paragraph 2. Removal was 25 days [NOT "three years" after State court final decision.

ERROR 14. "after numerous adverse rulings" [in State courts] illustrates disregard for the record. All courts ignored, omitted or mooted threshhold question of jurisdiction, dispositive evidence and facts, and controlling laws.

ERROR 15. Third time Memo improperly states that removal was not timely, mistakenly citing the code that makes it timely [28 U.S.C. 1446(b)]. See ERRORS 4 and 13. Timely removal is well documented.

ERROR 16. 28 U.S.C. #1446(b) was apparently not reviewed by the 9th Circuit. See 1446(b) paragraph 2, and ERRORS 2, 3, 4, 13, and 15.

ERROR 17. See all of the above, specifically ERROR 7 on "federal subject matter jurisdiction."

ERROR 18. All of the above cited ERRORS indicate that District court and the advisory Memo have abused discretion

ERROR 19. District Court did abuse its discretion. See all of the above

Footnote to Memo's page 2

ERROR 19. Most of petitioner's papers are either denied, ignored, returned or, as in opening brief, labeled "received" instead of "filed"

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CALIFORNIA COURT OF APPEALS

DISPOSITION

The motion to file an amended notice of appeal is denied. The consolidated appeal is dismissed. The motion to consolidate this appeal with case No.BO86583 is denied as moot. The requests for judicial notice, augmentation, and correction are denied as moot. Costs are awarded to respondent.

NOT TO BE PUBLISHED

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HASTINGS, J.

We concur:
EPSTEIN,Acting P.J.
ARANDA,J.*

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7 Because we are dismissing the appeals, we do not rule on appellant's various requests for judicial notice, augmentation and correction.

*Assigned by the Chairperson of the Judicial Council.



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LAST PAGE OF CALIFORNIA COURT OF APPEALS, SECOND DISTRICT NOVEMBER 11, 1996 "OPINION"

Pro se Pierson has tried for over five years to convey to courts that there is no case or controversy, often using other words:

Appeal #1, 12/23/93
"(this unlawfully) enabled WTC Co-op) to refile the case for additional money under the new case.."

Appeal #2, 02/22/94
"facts in case #SC023196 .. render case #SC027184 fatally defective;"

Appeal #3, 08/05/94
"(in allowing second action) trial court .. acted in excess of jurisdiction."

Appeal #4, 05/05/97
"void postjudgment order" citing 28 U.S.C.#1443
Pierson also used "lack of jurisdiction," "excess of jurisdiction," "nullity," "justiciability," "nonsuit" etc.

APPENDIX D

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE SECOND APPELLATE DISTRICT
DIVISION: 4

Joan G. Pierson
10375 Wilshire Blvd
#9B
Los Angeles, CA. 90024

RE: Wilshire Terrace Corporation
VS.
Pierson, Joan Godwin
2 Civil BO86583
Los Angeles NO. SC027184 [should be "SC023196/SC027184"]

* * REMITTITUR NOTICE **

Notice is hereby given that the Remittitur has been issued this date and that the opinion, decision or order entered in the above entitled cause on 05/07/96 is now final.

* * Dismissed By Motion * *

Respondent(S) To Recover Costs On Appeal.
JOSEPH A. LANE, Clerk
By: Deputy Clerk
[stamped] August 19, 1996

==========

fn. for D: California Court of Appeals refused to consolidate a portion of SC027184. Two awards to respondent resulted [see App.D for second award]. Los Angeles NO." is cited as "SC0271884" in this REMITTITUR whereas it should read SC023196/SC027184. Manipulations such as this abound in all courts. Errors in every aspect and level of this litigation ensure that there is no indication of the fact that the four appeals, are all on the same actions. [order of cost and fee award was erased from dismissal].

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UNITED STATES DISTRICT COURT
FOR THE NINTH DISTRICT OF CENTRAL CALIFORNIA

| | |
|---|---|
| WILSHIRE TERRACE CORPORATION, Plaintiff, vs JOAN GODWIN PIERSON, INDIVIDUALLY AND AS TRUSTEE OFTHE JOAN GODWIN PIERSON LIVING TRUST;and) DOES 1 through 25, inclusive, Defendants. | ) CV. 97-1576 -R<br>) NOTICE OF APPEAL AS A MATTER OF RIGHT on<br>) ----------<br>) United States Supreme Court #96-1663<br>) US District Court, 9th Dist. #97-1576 -R<br>) CA Supreme Court #SO54298-#SO57961<br>) CA Appeals ##s BO81436-#BO82466-#BO86583<br>) Los Angeles Superior Court ##s SC023196/SC027184 |

FILED CLERK
US DISTRICT COURT
MAY 05, 1997

NOTICE OF APPEAL AS A MATTER OF RIGHT

Notice is hereby given to the Judge of the United States District Court, Ninth District, to plaintiff Wilshire Terrace Corporation and to plaintiff's attorney Mitchell, Silberberg & Knupp, that JOAN GODWIN PIERSON, the defendant above named, hereby appeals to the United States Ninth Circuit Court of Appeals from District Court's refusal to rule on constitutional questions and defendant's request for injunction, and refusal to recognize defendant's 28 U.S.C. #1443 civil rights, and other refusals to exercise jurisdiction and abuses of discretion and from the void postjudgment order entered in this action on May 05, 1997.

Dated: May 05, 1997

[present residence]

[property in litigation]

JOAN GODWIN PIERSON
110 D Street S.E. #104
Washington D.C. 20003
phone 202-546-1224
[Wilshire Terrace #9B
10375 Wilshire Blvd.
Los Angeles, CA. 90024]
Joan Godwin Pierson
In Pro Per (Pro Se)
telephone 202-546-1224
or 310-278-2886

NOVEL
"THE FOOLPROOF CIA RETIREMENT PLAN"
==========

WHAT IF THE CIA WERE WORKING FOR A FOREIGN BANK, CONCEALED ACCOUNT LOSSES, AND SUPPRESSED EVIDENCE FOR A GOOD OLD BOY'S RETIREMENT PLAN?

---

What if: the CIA were preying on innocent Americans and had its own "stasi" type files?

A retired CIA agent-become-con-man with others were crafty enough to dupe both a large foreign owned financial institution and his former agency into complicity in their petty scam to drain a private bank account?

A duped or collusive CIA were surveilling, harassing and smearing an innocent American citizen to cover for a foreign owned bank implicated in the confidence game of greedy third parties?

Said foreign owned bank were intimidated by the third party con-men's threatening it with charges of wasting of assets, malfeasance, misfeasance etc. in siphoning a private account?

Said retired CIA agent had secretly married a rich old woman, decades older than he, moved her to an isolated spot (XXXXX) where the FBI has found a group of scam artists, then, after her questionable death, compromised her grandchildren and used the CIA for smear tactics, surveillance, set-ups and harassment to silence the daughter (expendable old lady)'s attempts to expose fraud, arson, conspiracy, collusion, murder and other crimes connected with a cover-up worse than the scam?

Are CIA methods defamation, ridicule, incompetence, immorality, set-ups, accidental death? Is the CIA groping for something to do? Insignificant old women are easy targets. Could it be fun and games on taxpayers' dollar?

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